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Internal Revenue Service

Department of the Treasury
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Person To Contact: _____, ID No. _____

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Date:
July 28, 2006

Legend

Holdings 1 =

Holdings 2 =

Acquiring =

Target =

Foreign Bank =

State A =

State B =

Government Agency =

a =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This letter responds to your February 7, 2006 request for rulings on certain federal income tax consequences of a completed transaction. The information in that request and in subsequent correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Summary of Facts

Holdings 1 is a bank holding company. Holdings 1 is the common parent of an affiliated group that files a consolidated federal income tax return that includes Acquiring. Acquiring is a State A Bank.

Before Date 1, Holdings 2 was a bank holding company. Holdings 2 was the common parent of an affiliated group that filed a consolidated federal income tax return that included Target. Target is a State A Bank.

Foreign Bank is a corporation that operates a bank in State B.

For what are represented to be valid business reasons, Holdings 1 wanted to combine the operations of Target and Acquiring and sell the State A bank charter of Target to Foreign Bank. Government Agency does not permit the transfer of a corporate entity that holds only a State A bank charter. Holdings 1 proposed to effect this combination in a manner that the Service has ruled upon in accordance with Rev. Proc. 89-50, 1989-2 C.B. 631. Government Agency refused to approve such form. Government Agency required that Holdings effect the transaction ("Completed Transaction") in the manner described below.

Completed Transaction

(i) On Date 1, Holdings 1 contributed \$a to Newco, a wholly owned newly formed subsidiary of Holdings 1. Holdings 2 then merged into Newco in exchange for \$a with Holdings 2 surviving. Shareholders of Holdings 2 received \$a in cancellation of their Holdings 2 shares.

(ii) On Date 2, Holdings 1 transferred all the stock of Acquiring to Holdings 2.

(iii) On Date 3, Target merged with and into Foreign Bank in exchange for cash ("Merger"). In the Merger, Holdings 2 received cash in the amount equal to the sum of (i) the book value of Target ("Amount 1") and (ii) the value of the Target bank charter and any required minimum capital ("Amount 2").

(iv) On Date 4, Holdings 2 transferred the cash received in step (iii) to Acquiring. Acquiring retained Amount 2 and used Amount 1 to acquire from Foreign Bank all of Target's assets other than the Target bank charter and any required minimum capital ("Retained Assets").

Representations

In connection with the Completed Transaction, the following representations have been made:

(a) The fair market value of the Acquiring stock and other consideration deemed to be received by Holdings 2 were approximately equal to the fair market value of the Target stock surrendered in the exchange.

(b) No party to steps (iii) and (iv) of the Completed Transaction would have undertaken step (iii) without also undertaking step (iv). The binding contract to undertake all parts of steps (iii) and (iv) was executed on Date 5.

(c) Holdings 2 has no plan or intention to sell or otherwise dispose of any of the Acquiring stock to a party related to Holdings 2 within the meaning of section 1.368-1(e)(3). Also, Holdings 2 has no plan or intention to liquidate Acquiring or to merge Acquiring with and into any other party.

(d) Acquiring acquired at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by Target immediately prior to the Completed Transaction. For purposes of this representation, amounts paid by Target to dissenters, amounts paid by Target to shareholders who receive cash or other property, amounts used by Target to pay its reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by Target immediately preceding the transfer will be included as assets by Target held immediately prior to the Completed Transaction. In addition, the Retained Assets are included as assets of Target held immediately prior to the Completed Transaction.

(e) After the transaction, Holdings 2 will be in control of Acquiring within the meaning of section 368(a)(2)(H).

(f) Acquiring has no plan or intention to redeem or to cause any other party to acquire any of its outstanding stock.

(g) Acquiring has no plan or intention to sell or otherwise dispose of any of the assets of Target acquired in the Completed Transaction, except for dispositions made in the ordinary course of business.

(h) The liabilities of Target assumed by Acquiring (within the meaning of section 357(d)) were incurred by Target in the ordinary course of business and are associated with the assets transferred.

(i) Following the Completed Transaction, Acquiring will continue the historical businesses of Target or use a significant portion of Target's historical assets in a business.

(j) At the time of the Completed Transaction, Acquiring did not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Acquiring that, if exercised or converted, would affect Holdings 2's acquisition or retention of control of Acquiring, as defined in section 368(a)(2)(H).

(k) Each party paid its own expenses, if any, incurred in connection with the Completed Transaction.

(l) There was no intercorporate indebtedness existing between Acquiring and Target that was issued, acquired, or will be settled at a discount.

(m) No two parties to the transaction are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).

(n) The fair market value of the assets of Target that were transferred to Acquiring equaled or exceeded the assets' aggregate adjusted basis.

(o) The fair market value of the assets of Target that were transferred to Acquiring exceeded the sum of the amount of the Target liabilities immediately before the Completed Transaction and the amount of any money and the fair market value of any other property received by Holdings 2 in connection with the Completed Transaction.

(p) The fair market of Acquiring's assets exceeded the amount of Acquiring's liabilities immediately after the Completed Transaction.

(q) Target is not under the jurisdiction of a court in a title 11 or similar case within the meaning of section 368(a)(3)(A).

Rulings

Based solely upon the information submitted and the representations set forth above, we rule solely as follows:

- (1) For federal income tax purposes, steps (iii) and (iv) of the Completed Transaction will be treated as the acquisition by Acquiring of all the assets of Target (including the sales proceeds from the Retained Assets that Target is treated as selling to Foreign Bank ("Sales Proceeds")) solely in constructive exchange for Acquiring common stock and the assumption by Acquiring of the liabilities of Target, followed by the constructive distribution of Acquiring common stock in liquidation of Target.
- (2) The acquisition by Acquiring of substantially all the assets of Target (including the Sales Proceeds) solely in constructive exchange for Acquiring common stock and the assumption of Target's liabilities will constitute a reorganization pursuant to § 368(a)(1)(D) of the Internal Revenue Code. Acquiring and Target will each be "a party to a reorganization" within the meaning of § 368(b).
- (3) No gain or loss will be recognized by Acquiring upon the receipt of the Target assets in constructive exchange for Acquiring common stock. § 1032.
- (4) The basis of each asset of Target in the hands of Acquiring will be the same as the basis of each such asset in the hands of Target immediately before the transaction. § 362(b).
- (5) The holding period of the assets of Target in the hands of Acquiring will include the period during which the assets were held by Target. § 1223(2).
- (6) No gain or loss will be recognized by Target upon the transfer of all of its assets to Acquiring in constructive exchange for Acquiring stock and the assumption by Acquiring of Target's liabilities. §§ 361(a) and 357(a).
- (7) No gain or loss will be recognized by Target on its constructive distribution of Acquiring stock in exchange for Holdings 2's Target stock. § 361(c)(1).
- (8) No gain or loss will be recognized by Holdings 2 upon the constructive receipt of Acquiring stock in exchange for its Target stock. § 354(a)(1).
- (9) Holding 2's basis in the Acquiring stock constructively received will be the same as the basis of the share or shares (or allocable portions thereof) of Target common stock constructively exchanged therefor, allocated in the manner described in § 1.358-2(a)(2)(iii).

(10) Pursuant to § 381(a) and § 1.381(a)-1, the tax year of Target ended on the effective date of the Completed Transaction and Acquiring must succeed to and take into account the items of Target described in § 381(c), subject to the provisions and limitations specified in §§ 381, 382, 383, and 384, and the regulations thereunder. See § 381(a).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Lewis K. Brickates
Branch Chief, Branch 4
Office of Associate Chief Counsel
(Corporate)